



City of Rockville

## MEMORANDUM

May 28, 2010

TO: Planning Commission

FROM: Jeremy Hurlbutt, AICP, Planner III *JH*

SUBJECT: Time Extension for Use Permit Application USE2007-00708, Beall's Grant II,  
250 & 254 North Washington Street

At its meeting of August 29, 2008, the Rockville Planning Commission reviewed and conditionally approved the above-referenced Use Permit Application (See Attachment #1). The application is for approval of a 109 unit apartment building which was amended by STP2010-00025 to a 74 unit apartment building.

The approved application will expire on August 29, 2010, two years from the date of the approval letter. The applicant, Montgomery Housing Partnership (MHP) Beall's Inc., has applied for the first of two possible time extensions of one (1) year each (See Attachment #2). Per Section 25.05.08 – Extension of Implementation Period -MHP has meet the three conditions:

1. Section 25. 08.02 expressly allows the extension;
2. The extension request was received prior to the expiration of the approval; and
3. MHP has provided the request in writing and it includes a justification.

The applicant states that an appeal of the Planning Commission's approval of this case has delayed their ability to commence construction by August 29, 2010. The applicant wishes to obtain a one year extension to allow for the courts to hear and rule on the appeal.

### REQUIRED FINDINGS

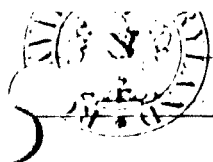
Section 25.05.08.c. – Extensions may be granted only upon good cause. In determining whether good cause has been shown, the Approving Authority must consider:

1. The actions taken by the applicant to diligently pursue implementation of the approval, including but not limited to execution of required documents and pursuing required approvals, and
2. Whether the approved development complies with all of the current provisions of this chapter and other applicable laws and with the current Master Plan recommendations, and
3. Such other factors deemed to be relevant.

Section 25.08.02.b.1 of the Zoning Ordinance requires that construction under a Use Permit approved prior to March 16, 2009 must commence within two years of the approval letter of the Approving Authority or the use permit will expire. A total of two extensions of one year each may be granted by the Planning Commission for good cause shown. Approval of this time extension would extend the implementation period to August 29, 2011, with an additional one-year extension possible. Note that the Planning Commission's recent approval of a major amendment (STP2010-00025), to this Use Permit did not extend the implementation period and that approval will become void on August 29, 2010 if an extension is not granted.

Attachments:

1. Approval letter
2. Application



August 29, 2008

City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20860-2364  
www.rockvillemd.gov

Community Planning and  
Development Services  
240-314-8200  
TTY 240-314-8137  
FAX 240-314-8210

Historic Preservation Office  
240-314-8230

Inspection Services Division  
240-314-8240

Long Range Planning  
Division  
240-314-8200

Planning Division  
10-314-8220

Utilization/Housing Division  
240-314-8200

MAYOR  
Susan R. Hoffmann

COUNCIL  
John B. Britton  
Piotr Gajewski  
Phyllis Marcuccio  
Anne M. Robbins

CITY MANAGER  
Scott Ullery

CITY CLERK  
Claire F. Funkhouser

CITY ATTORNEY

Robert Goldman  
MHP Beall's Inc.  
12200 Tech Road, Suite 250  
Silver Spring, Maryland 20904

Re: Use Permit Application USE2007-00708,  
254 North Washington Street and 13 Beall Avenue

Dear Mr. Goldman:

At its July 23, 2008 meeting, the City of Rockville Planning Commission granted approval of the referenced application, subject to certain conditions described below. This constitutes use permit approval for a 109-unit apartment building with parking garage to be constructed as Phase II of the Beall's Grant Apartments. Approval of USE2007-00708 is subject to full compliance with the following conditions:

1. Submission, for the approval of the Chief of Planning, of eleven (11) copies of the site plan, revised according to Planning Commission Exhibit A, and illustrating that the following site development issues and concerns have been satisfactorily addressed:
  - a. Modifications to the site data table to reflect the parking requirements for the Phase I building; and
  - b. Signage and pavement markings approved per the Chief of Traffic and Transportation.
2. Submission, for the approval of the Chief of Planning and City Forester, of eleven (11) copies of the forest conservation/landscaping plan for the site, to be submitted along with the site plan as part of the signature set.
3. Submission, for the approval of the Planning Commission, of a Final Record Plat to consolidate the property into a single record lot prior to issuance of a building permit.
4. Submission, for the approval of the Department of Public Works (DPW), of the following detailed engineering plans, studies and supporting computations prior to issuance of a building permit, including:
  - a. Sediment control plans, with existing and proposed contours for all disturbed areas;

000282

- b. Stormdrain study for the site with computations and drainage area map to ensure safe conveyance;
- c. On-site stormwater management (SWM) system;
- d. Public improvement plans, including but not limited to streets, streetscape and sidewalks for public use, street trees, street signage and marking, water sewer and stormdrain; and
- e. Street lighting plans with proposed street lights.

Engineering plans on 24" x 36" City base sheets, at a minimum scale 1"=30' for all public improvement required plans.

- 5. The proposed sewer house connection along Beall Avenue not impact trees to be planted in the roadway median.
- 6. The applicant shall contribute \$26,100 toward the construction of the 16-inch water main improvements in Beall Avenue prior to issuance of building permits.
- 7. The applicant shall provide two new fire hydrants, one along Beall Avenue and the other on North Washington Street. The location of the hydrants and pipe layout shall be reviewed and approved by DPW and the Fire Marshall during detailed engineering.
- 8. The applicant shall establish easements for the two water meters serving the property.
- 9. Stormwater management (swm) for the property shall be in compliance with the SWM concept approval letter dated January 2, 2007, as may be amended by DPW.
- 10. The applicant shall abandon the existing 2-inch water house connection along North Washington Street per DPW requirements.
- 11. Below grade excavation shall be dewatered per DPW sediment control requirements to an acceptable outfall during construction.
- 12. The garage levels below grade must outfall in the sanitary sewer.
- 13. That necessary bonds be posted and permits obtained from DPW, as appropriate.
- 14. The applicant shall contribute \$105,000, prior to issuance of the building permit, towards the construction of the pedestrian safety improvement on North Washington Street just south of Dawson Avenue and north of the Gas Station.

000283

15. The applicant shall provide 56 long-term (bicycle lockers) spaces and 4 short-term (bicycle racks) spaces. A locked bicycle room with racks or a locked cage is recommended for long-term storage. An inverted "U" bicycle rack is recommended for short-term storage. These spaces shall be provided at a safe and secure location that is approved by DPW. The location of the short-term spaces along the street shall be approved by DPW at detailed engineering stage.
16. The applicant shall contribute, prior to the issuance of any building permit, a monetary contribution of \$6500 for the implementation of one bus shelter to be located nearby to the subject site or at locations in the vicinity of the site. This contribution will be incorporated into the Bus Stop Beautification CIP project.
17. All internal traffic control devices (i.e. signs, marking and devices placed on, over or adjacent to a roadway or pathway) to regulate, warn or guide pedestrians and/or vehicular traffic shall comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). The signing and pavement marking plans shall be submitted to DPW and approved by the Chief of Traffic and Transportation.
18. Submission, for review and approval of the DPW prior to issuance of the DPW permit, a phasing plan for pedestrian access, construction access, staging and parking. Pedestrian access plan for construction period shall include, but not be limited to, the methods of maintaining pedestrian safety and access on the existing sidewalks, temporary closing of sidewalks for work in the streetscape zone, and pedestrian detours, as well as efforts to minimize closure of sidewalks.
19. The applicant shall construct a five-foot wide sidewalk along old North Washington Street in front of the funeral home prior to the issuance of the occupancy permit. The sidewalk design shall be approved by DPW at detailed engineering stage.
20. During construction, contractors will not be permitted to park in the residential neighborhood, west of the site.
21. The applicant must submit the on-site lighting plan, including photometrics, to the Chief of Traffic and Transportation prior to the issuance of the building permit.
22. The applicant shall install one streetlight along the old North Washington Street frontage in front of the funeral home and relocate the existing streetlight in front of the 60-unit apartment building in order to provide adequate lighting for pedestrians.

The applicant shall submit a request to Pepco to provide streetlight service, attaching one copy of the plan approved by the City. After receiving a proposal and cost estimate from Pepco, the applicant shall submit payment to Pepco, install the streetlights and coordinate

000000

Robert Goldman

Page 4

August 29, 2008

---

with Pepco the installation of the underground wiring. Bonds will be held until all streetlights are energized and accepted by the City of Rockville.

23. A Forestry Permit is required for this project. Conditions for issuance of the Forestry Permit are:
- a. Submittal and approval of a Final Forest Conservation Plan (FCP) by the City Forester.
    - i. Review fee, completed application form, including contact information and checklist items, must be submitted with Forest Conservation Plan.
    - ii. All proposed and existing utilities and easements must be shown on the FCP.
      - 1. Street trees and replacement trees cannot be located within the PUE or other easements.
      - 2. Street trees require a seven-foot tree lawn or continuous soil panel under the sidewalk.
    - iii. The landscape plan must be included as part of the FCP submission and will be reviewed by Forestry prior to approval of the Signature Set.
  - b. An executed Five year Forest and Tree Conservation Maintenance Agreement.
  - c. A recorded Forest Conservation Easement and Declaration of Covenants.
  - d. An approved Bond filed with the City Forester.
  - e. An approved Sediment Control Plan.
    - i. The SCP and FCP must be consistent and will be reviewed together.
  - f. All afforestation requirements must be met on site.
  - g. All off-site significant trees removed in conjunction with this project that cannot be planted either off-site on the same property or on-site will require payment of fee-in-lieu.
24. That any new lighting fixtures be installed so as not to produce light spillage into residential neighborhoods nor produce disruptive glare visible from abutting public rights-of-way.
25. That all proposed rooftop mechanical equipment be screened appropriately and be compatible in color and material with the exterior surfaces of the proposed building.
26. That any new electrical transformers or other utility equipment lockers or facilities be placed underground, unless the Planning Commission grants a waiver.

0000225

27. That construction fencing be installed along the common rear property line with the attached units on North Adams Street, to include materials that screen the view of the proposed construction from the subject units to the degree possible.
28. That safety and security measures be installed and implemented in the parking garage in order to enhance the safety of the garage for its users.
29. The Use Permit does not include approval for signs. Sign permits must be applied for from the Inspection Services Division.
30. All construction must meet the requirements of the City's construction codes, Fire and Life Safety Codes, Maryland Building Code for the Handicapped and Federal ADA requirements.
31. That all conditions of approval for Use Permit USE92-0500 continue to apply, unless superseded above.

Section 25-193(d) of the Zoning Ordinance requires the **construction or operation must commence within two (2) years of the date of this decision or application approval shall expire.** If the applicant can show just cause, a maximum of two (2) time extensions may be granted by the Planning Commission, each not to exceed one year. However, time extensions are not automatically approved, and sufficient detail and justification will be required in order for the Planning Commission to consider granting an extension.

Any person aggrieved by this decision of the Planning Commission may appeal the same to the Circuit Court for Montgomery County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

By Direction of the City of Rockville  
Planning Commission

*R. James Wasilak*  
R. James Wasilak, AICP  
Chief of Planning

000286

Robert Goldman

Page 6

~~August 29, 2008~~

Note: A building permit may be issued only when the conditions of approval have been met and a copy of the following acknowledgement, signed and executed by the applicant, has been returned to the Planning Division office. Be advised that Commission approval does not constitute approval by any department or agency having jurisdiction over this development project.

**I ACKNOWLEDGE RECEIPT OF THIS USE PERMIT USE2007-00708 AND AGREE TO FULLY COMPLY WITH CONDITIONS UPON WHICH APPROVAL WAS GRANTED. I FURTHER ACKNOWLEDGE THAT FAILURE TO COMPLY WITH THESE CONDITIONS MAY CAUSE APPROVAL TO BE REVOKED BY THE PLANNING COMMISSION.**

---

(Applicant's Signature)

---

(Applicant's Printed Name)

/rjw

cc: Planning Commission  
Loreen Arnold, Preston Partnership  
Charles Baker, Chief of Inspection Services  
Sondra Block, Assistant City Attorney  
Elise Cary, Assistant City Forester  
Ed Duffy, Chief of Management and Support  
John Hollida, Civil Engineer  
William Kominers, Holland & Knight  
Michael Plitt, Macris, Hendricks & Glascock  
Nazar Saleh, Transportation Engineer  
Craig Simoneau, Director of Public Works  
Steven Sprecher, Montgomery Housing Partnership  
Susan Straus, Chief Engineer/Environment  
Susan Swift, Director of Community Planning and Development Services  
Rebecca Torma, Transportation Planner  
Scott Ullery, City Manager  
Mark Wessel, Civil Engineer III  
Application File

000287



Robert Goldman

Page 7

~~August 29, 2008~~

---

John Anselmo  
Mark Bellinger  
Stuart Bowman  
Don Hadley  
Maggie Hadley  
Alexandra Haropolous  
Martin Heilman  
Selden Higgins  
Maria Hristova  
Jack Leiderman  
Yuan Li  
Chung Mi Luan  
Vicki McMullen  
George Snowden  
Patricia Woodward, West End Citizens Association  
Kevin Zaletsky  
Melanie Zaletsky

000288



Application for

**Time Extension****EXT**  
2/09**City of Rockville***Department of Community Planning and Development Services*

111 Maryland Avenue, Rockville, Maryland 20850

Phone: 240-314-8200 • Fax: 240-314-8210 • E-mail: Cpds@rockvillemd.gov • Web site: www.rockvillemd.gov

**Please Print Clearly or Type**Property Address Information 254 North Washington Street

Property Name \_\_\_\_\_

Project Description Use Permit for 109-unit apartment building and parking garageSUBDIVISION City Center Lot(S) Lot 5 (proposed) Block AZoning MXNC Tax Account (S) 03032855 , \_\_\_\_\_ , \_\_\_\_\_**Applicant Information:***Please supply Name, Address, Phone Number and E-mail Address*Applicant MHP BEALL'S INC.12200 Tech Road, Suite 250, Silver Spring, MD 20904 301-622-2400Property Owner 12200 Tech Road, Suite 250, Silver Spring, MD 20904 301-622-2400Architect Loreen Arnold, Arnold & Arnold, 3220 Rhode Island Avenue  
Riverdale Park, MD 20737 301-908-5207Engineer Michael Plitt, Macris, Hendricks & Glascock, P.A.  
9220 Wightman Road, Suite 120, Montgomery Village, MD 20886Attorney Holland & Knight LLP, 3 Bethesda Metro Center, Suite 800,  
Bethesda, MD 20814 301-654-7800**STAFF USE ONLY****Application Acceptance:**Application # USE2007-00708

Pre-Application \_\_\_\_\_

Date Accepted \_\_\_\_\_

Staff Contact \_\_\_\_\_

**Application Intake:**OR Date Received 5/18/10Reviewed by TWT

Date of Checklist Review \_\_\_\_\_

Deemed Complete: Yes ☐ No ☐

ORIGINAL APPLICATION NUMBER USE2007-00708ORIGINAL APPLICATION APPROVAL DATE 08 / 29 / 2008DATE OF ANY PREVIOUS TIME EXTENSIONS GRANTED (IF ANY) N/A /      /     A TIME EXTENSION IS NECESSARY FOR THE FOLLOWING REASON (S) SEE ATTACHED***A letter of authorization from the owner must be submitted if this application is filed by anyone other than the owner.***

I hereby certify that I have the authority to make this application, that the application is complete and correct and that I have read and understood all procedures for filing this application.

Please sign here:

Robert Gold, Vice President  
M H & Beall, Inc.**Application Checklist:**☐ Complete Application☐ Filing Fee**Comments on Submittal: (For Staff Use Only)****EXT**

### **Justification in Support of Application for Time Extension**

MHP Beall's Inc., the owner of the Property that is the subject of this Application for a Time Extension, offers the following justification in support of the Application.

The Planning Commission's decision dated August 29, 2008, approving Use Permit USE2007-00708, was appealed by certain individuals to the Circuit Court of Montgomery County, Maryland. The Circuit Court issued its Order affirming the Planning Commission's decision on May 29, 2009. A copy of the Circuit Court's Order is attached as Exhibit "1".

The Circuit Court's Order was appealed by certain individuals to the Court of Special Appeals of Maryland. Oral argument in the appeal will be heard on June 4, 2010. A copy of the Court of Special Appeals schedule for oral argument is attached as Exhibit "2".

After oral argument, the Court of Special Appeals will take the appeal under advisement and will issue its decision in the appeal. The issuance of the decision typically takes four to six months, but can take longer because there is no time limit by which the Court must render its decision. Thirty days after the Court of Special Appeals issues its decision, the Court will issue a mandate; the mandate is the final action of the Court of Special Appeals.

Section 25.08.02(b)(1) of the City of Rockville Zoning Ordinance provides that construction under a use permit approved prior to March 16, 2009 must commence within two (2) years from the date of the Planning Commission approval letter or the permit will expire. That Section also provides that "for good cause shown," not more than two (2) extensions not exceeding one (1) year each, may be granted by the original approving authority.

As stated above, this matter has been on appeal since its approval in 2008. MHP has diligently defended against the appeal in cooperation with the City; however, the timing of the appeals is within the exclusive purview of the Courts and, as such, the speed with which the Courts schedule, hear, and rule on the appeal is not within the control of MHP.

The development, as approved, complies with the provisions of the Zoning Ordinance, other applicable laws, and the recommendations and conditions as set forth in the Use Permit and in current Plan recommendations.

Granting the requested extension would be in the public interest because the Applicant is effectively unable to proceed in accordance with the Use Permit until the appeal process has been completed. The City Code at this time does not provide any

tolling of the 2-year period for implementation of the Use Permit when an approval is appealed. Therefore, this request for a time extension is the only possible relief available to a successful applicant whose favorable decision by the Planning Commission has been appealed.

Given the prospective date of the oral argument, and the fact that the Court's opinion must be written and a mandate issued, it will be impossible for MHP to "commence construction" of the use within two years of the date of the Planning Commission's decision of August 29, 2008.

Accordingly, MHP respectfully requests an extension of the Use Permit until August 29, 2011 (one year beyond the current expiration date of the Use Permit), as allowed under Section 25.08.02(b)(1) of the Zoning Ordinance.

# 9118854\_v1

## IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

JOHN ANSELMO, ET AL  
Petitioners

\*

v.

\*

Civil Action No. 301348

CITY OF ROCKVILLE PLANNING  
COMMISSION, MAYOR & COUNCIL  
OF ROCKVILLE

\*

\*

RespondentsORDER

This matter comes before this Court upon the Petition of John Anselmo, Larry Giammo, John L. Spano, George R. Snowden Sr., Raghuveer Rao, Jack Liederman and Victoria McMullen who contend that the City of Rockville Planning Commission's decision approving Use Permit Application USE2007-00708 was erroneous as a matter of law and should be reversed. After considering the pleadings of the parties and having heard oral arguments on May 29, 2009, the Court affirms the Commission's decision below for the reasons set forth on the record and because the Commission's decision is supported by substantial evidence and not erroneous as a matter of law.


  
JOHN W. DEBELIUS III

Judge of the Circuit Court for  
Montgomery County, Maryland

**ENTERED**

JUN 05 2009

Clerk of the Circuit Court  
Montgomery County, Md.

May 29, 2009  
DATE

Exhibit "1"

NOTE: Although every effort is made to ensure that the following information is up-to-date, last minute changes to the schedule may be required. To confirm information listed on this schedule, please contact the Clerk's Office at 410-260-1450.

# THE COURT OF SPECIAL APPEALS

JUNE 01, 02, 03, 04, 07, 08, 14, 15, 16, 17, 18, 2010

FRIDAY, JUNE 04, 2010

## Courtroom No. 1

No. 00623/09 Betty Skovron et al. vs. Robin R. Ruby et al.  
 No. 00612/09 Emma Hofmeister et al. vs. Department of Public Safety  
 and Correctional Services, Division of Correction  
 No. 00817/09 Frederick Donuts, Inc. et al. vs. Upcounty Donuts, LLC.  
 No. 00636/09 Tina Hewett vs. OfficeMax Incorporated  
 No. 00768/09 Norma Fuentes vs. Barry G. Fox, Jr. et al.  
 No. 01112/09 Kenneth Earl Barnes, Jr. vs. State of Maryland

## Courtroom No. 2

No. 00777/09 Charles Edward Jones et al. vs. James Elsworth Williams, Jr. et al.  
 No. 00606/09 Wayne L. Wrigley, Sr. vs. Demetrius Moore et al.  
 No. 00921/09 Malcolm J. Marks vs. Criminal Injuries Compensation Board  
 No. 01649/09 Joseph Edward Louis vs. State of Maryland  
 No. 01716/09 Charles Richard Keys, Jr. vs. State of Maryland  
 No. 01006/09 John Anselmo et al. vs. Mayor and Council of Rockville et al.

Exhibit "2"